PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Hiromitsu TAKEDA et al.

Group Art Unit: 1619

Application No.: 10/587,526

Examiner: J. VENKAT

Filed: September 15, 2006

Docket No.: 128866

For: CATION-MODIFIED PURIFIED GALACTOMANNAN POLYSACCHARIDE AND COSMETIC COMPOSITION CONTAINING THE SUBSTANCE

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the March 29, 2010 Restriction Requirement, Applicants provisionally elect Group II, claims 9-14, with traverse.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

In the present application, claim 9 of Group II is directed to a cosmetic composition comprising the cation-modified galactomannan purified polysaccharide according to claim 1 of Group I. Because claims 1 and 9 each requires the cation-modified galacromannan polysaccharide recited in claim 1, Groups I and II share common technical features.

Therefore, *a priori* unity of invention exists between all the claims. Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of the subject matter that is common to claims 1 and 9 is known in the prior art. Therefore, Applicants respectfully submit that lack of unity of invention has not been established, and thus a restriction requirement based on a lack of unity of invention is improper.

Applicants also respectfully submit that there would be no serious burden on the Patent Office to examine all of the claims because a search of the subject matter of any one group would encompass the search of the subject matter of the remaining groups.

Reconsideration and withdrawal of the restriction and election of species requirement are respectfully requested.

Respectfully submitted,

James A. Oliff
Registration No. 27,075

Aya Suzuki
Registration No. 64,621

JAO:AQS/mcp

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OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

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